

Notice of Allowability

Application No.

10/669,474

Examiner

Louis D. Lieto

Applicant(s)

MCNEEL, DOUGLAS

Art Unit

1632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the after final amendment of 6/22/06.
2. ☒ The allowed claim(s) is/are 1,2,7,29,30, and 31.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☒ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

Anne-Marie Falk

ANNE-MARIE FALK, PH.D
PRIMARY EXAMINER

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for the claim amendments was given in a telephone interview with Zhibin Ren on 8/21/2006.

In the Claims:

- The claims have been rewritten as follows:

1: A method for inducing a cytotoxic immune reaction to cells expressing human prostatic acid phosphatase (PAP) in a human subject in need thereof, comprising administering intradermally, intramuscularly, intravascularly, intravenously, or intraarterially to the human subject an effective amount of a recombinant DNA plasmid comprising a polynucleotide sequence encoding human PAP, and an immune stimulatory sequence comprising a 5'-GTCGTT-3' motif, wherein the human PAP is expressed and the human subject develops a cytotoxic immune reaction against cells expressing human PAP.

8: Canceled

9: Canceled

23. Canceled

28. Canceled

29. A DNA vaccine comprising the pTVG-HP plasmid vector.

30. A pharmaceutical composition comprising the DNA vaccine of claim 29, and a pharmaceutically acceptable carrier

EXAMINER'S COMMENT

Claims 29-31 contain subject matter, which was not described in the specification in such a way as to enable the Artisan to make and/or use the invention. The invention appears to employ novel biological materials, i.e., pTVG-HP. Since the biological materials are essential to the claimed invention they must be obtainable by a repeatable method set forth in the specification or otherwise readily available to the public. If the biological materials are not so obtainable or otherwise available, the requirements of 35 USC 112, first paragraph, may be satisfied by a deposit of the biological materials. The specification does not disclose a repeatable process to obtain the biological materials and it is not apparent if the biological materials are readily available to the public.

If the deposit is made under the Budapest treaty, then an affidavit or declaration by Applicant, or a statement by an attorney of record over his or her signature and registration number, stating that the specific biological materials have been deposited under the Budapest Treaty and that the biological materials will be irrevocably and without restriction or condition

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released to the public upon issuance of a patent would satisfy the deposit requirement made herein. If the deposit has not been made under the Budapest Treaty, then in order to certify that the deposit meets the criteria set forth in 37 CFR 1.801-1.809, Applicant may provide assurance of compliance by an affidavit or declaration, or by a statement by an attorney of record over his or her signature and registration number, showing that:

(a) during the pendency of this application, access to the invention will be afforded to the Commissioner upon request;

(b) all restrictions upon availability to the public will be irrevocably removed upon granting of the patent;

(c) the deposit will be maintained in a public depository for a period of 30 years or 5 after the last request or for the effective life of the patent, whichever is longer;

(d) a test of the viability of the biological material at the time of deposit will be made (see 37 CFR 1.807); and

(e) the deposit will be replaced if it should ever become inviable.

Applicant's attention is directed to MPEP §2400 in general, and specifically to §2411.05, as well as to 37 CFR § 1.809(d), wherein it is set forth that "the specification shall contain the accession number for the deposit, the date of the deposit, and a description of the deposited material sufficient to specifically identify it and to permit examination." The specification should be amended to include this information, however, applicant is cautioned to avoid the entry of new matter into the specification by adding any other information

CONCLUSION

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to (571) 272-0547. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dr. Lou Lieto whose telephone number is (571) 272-2932. The examiner can normally be reached on Monday-Friday, 9am-5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Ram Shukla can be reached on (571) 272-0735. The fax phone number for the organization where this application or proceeding is assigned is (571)-272-0735. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from

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either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Patent applicants with problems or questions regarding electronic images that can be viewed in the PAIR can now contact the USPTO's Patent Electronic Business Center (Patent EBC) for assistance. Representatives are available to answer your questions daily from 6 am to midnight (EST). The toll free number is (866) 217-9197. When calling please have your application serial or patent number, the type of document you are having an image problem with, the number of pages and the specific nature of the problem. The Patent Electronic Business Center will notify applicants of the resolution of the problem within 5-7 business days. Applicants can also check PAIR to confirm that the problem has been corrected. The USPTO's Patent Electronic Business Center is a complete service center supporting all patent business on the Internet. The USPTO's PAIR system provides Internet-based access to patent application status and history information. It also enables applicants to view the scanned images of their own application file folder(s) as well as general patent information available to the public.

For all other customer support, please call the USPTO Call Center (UCC) at 800-786-9199.

Dr. Louis D. Lieto
Patent Examiner
Art Unit 1632



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